



COMMERCIAL SHELLFISH LEASE APPLICATION INSTRUCTIONS

The Department of Natural Resources (DNR) and the U.S. Army Corps of Engineers began jointly accepting applications for commercial shellfish aquaculture projects in the Chesapeake Bay, its tributaries and the Coastal Bays in October 2010. Following the passage of new legislation during the 2011 session and related regulations, the joint application was revised to allow for submerged land leases in oyster sanctuaries as well as cages and float structures in water column leases. Regulation changes made effective since that time have required several subsequent revisions to the application. The current version of the Joint Application for State Commercial Shellfish Aquaculture Lease and Corps of Engineers Federal Permit may be submitted to the Department of Natural Resources in person at the Tawes State office building or by USPS mail. All applications are date and time stamped and reviewed on a first come first served basis. Older versions of the application are not accepted once replaced by an updated version.

General Information

Lease Term: Commercial shellfish aquaculture leases in the Chesapeake Bay or Coastal Bays are granted for a term of twenty (20) years, renewable for one additional term. After a 40-year leasehold, continuous use of the same ground requires reapplication by the leaseholder.

Laws and Regulations: Please review all applicable statutes and regulations before submitting your application. The Code of Maryland Regulations (COMAR) is searchable online at the following website: <http://www.dsd.state.md.us/comar/>. Maryland statutes pertaining to shellfish (oysters and clams) are given in Natural Resources Articles §4-11 and §4-11A, with the latter containing aquaculture-specific provisions. Free public access to the law is available online at the following website: <http://www.lexisnexis.com/hotttopics/mdcode/>.

Corps Regional General Permit-1: On August 15, 2011, the U.S. Army Corps of Engineers (USACE) issued a Regional General Permit (RGP-1) to streamline the review process for aquaculture activities that are similar in nature and have minimal impacts on the environment including submerged land and water column leases. The RGP-1 eliminates the requirement for a Federal public notice and exempts the applicant from the \$100 Federal permit fee. To be eligible for consideration under the RGP-1, shellfish aquaculture projects must be no larger than 50 acres for a submerged land lease, 5 acres for a water column lease utilizing cages on bottom and 3 acres for a water column lease utilizing floats.

Projects that do not meet the requirements set forth in the RGP-1 will be reviewed through an Individual Permit (IP) process. Individual permits are subject to a comprehensive review by the Corps, including issuance of a Federal public notice, and may require additional processing time. A \$100 fee is due to the U.S. Army Corps of Engineers at the time of issuance of an Individual Permit.

A description of the RGP-1 is available online at the following USACE Baltimore District Aquaculture website: <http://www.nab.usace.army.mil/Missions/Regulatory/Aquaculture.aspx>

Forms and Informational Documents: Numerous aquaculture-related forms and additional informational documents are available at the DNR Aquaculture Division website: <http://dnr.maryland.gov/fisheries/oysters/industry/aquaculture/>.

Cost: To be considered complete, each application (one per non-contiguous site) must be accompanied by a non-refundable state application fee of:

\$300.00 Submerged Land Lease

\$300.00 Water Column Lease

Please make checks payable to State of Maryland Department of Natural Resources. If you wish to apply for both a Submerged Land Lease and a Water Column Lease on the same site, you must submit a separate application for each.

Insurance: Applicants should be aware that the Department requires water column lease holders to maintain at their expense, throughout the Term of the lease, insurance against loss or liability in connection with bodily injury, death, property damage or destruction, occurring within the leased area or arising out of the use of the lease by the leaseholder or its agents, employees, officers, and visitors.

The language pertaining to insurance contained in a standard lease agreement reads as follows:

“If this Lease includes the water column, Lessee shall maintain at its expense, throughout the Term, insurance against loss or liability in connection with bodily injury, death, property damage or destruction, occurring within the Area or arising out of the use thereof by Lessee or its agents, employees, officers, and visitors, under one or more policies of Commercial General Liability insurance having such limits as to each as are reasonably required by Lessor from time to time, but in any event of not less than a minimum coverage of One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) annual aggregate, and shall contain broad form CGL Endorsement or its equivalent. Each such policy shall (a) name as insureds thereunder the State of Maryland and the Department of Natural Resources and Lessee, (b) by its terms be considered primary and non-contributory with respect to any other insurance (if any) carried by Lessor or its successors, (c) by its terms, provide Lessor with thirty (30) days prior written notice before cancellation, non-renewal, or material change to a policy, and (d) be issued by an insurer of recognized responsibility licensed to issue such policy in Maryland. Lessee shall obtain from its insurer and deliver to Lessor an endorsement to Lessee’s policy to evidence that Lessor is named as an additional insured and will be given thirty (30) days notice prior to cancellation, non-renewal, or material change to the policy.”

Time to Issue: The entire State issuance process will take a minimum of four months once the Department receives a complete application. Due to the volume of applications currently under review at this time, the actual time to lease issuance can approach six to ten months. Issuance times may vary depending on the nature of the application and outcome of the public notice process.

What steps should I take prior to submitting an application?

The Department recommends that applicants take the following steps prior to submitting an application. This will help facilitate a more streamlined review process.

1. Utilize the Department’s Aquaculture Siting Tool, an online interactive mapping utility that can assist interested parties in identifying potential lease locations by minimizing known resource and other types of conflicts. Just prior to submitting an application, one can generate printable maps, identify corner coordinates and calculate total area for a proposed lease using this tool. It is available on the Aquaculture Division web page: <http://www.dnr.state.md.us/fisheries/oysters/industry/aquaculture/>.
2. Investigate one or more prospective lease locations by boat and record accurate corner coordinates using a GPS unit. Make a note of the depths both at low and high tide, bottom type, boating traffic, adjacent residential use, and other ongoing recreational and commercial uses in and near the area to inform yourself about the site and its potential for commercial use.

3. Determine whether or not the project meets the criteria for consideration under the United States Army Corps of Engineers Regional General Permit-1. If it does not, the project will be considered for an Individual Permit and is subject to additional requirements (see p. 1).
4. If need be, contact the Aquaculture Division to discuss your proposed project. Staff will be able to help you determine if the proposed site meets statutory requirements but cannot recommend or choose a site for the applicant. If necessary, arrangements can be made to schedule an in-person meeting at the Tawes Building in Annapolis. Meetings are by appointment only.
5. Mark the center of your proposed area with a stake just prior to submitting the application.
6. Discuss your project with landowners adjacent to the proposed site. All adjacent landowners will receive direct notice of the project via State and Federal notification processes. The Department encourages applicants to talk with landowners and answer questions prior to these notices being issued. This will help to alleviate concerns and foster a better understanding of the commercial shellfish aquaculture activities associated with the project. It may also uncover additional issues to consider, such as licensed shoreline or offshore blinds used for waterfowl hunting, not readily visible during your on-site investigation.

What do I need to submit? – Application Checklist

- _____ One signed copy of a fully completed Joint Application for State Commercial Shellfish Aquaculture Lease and Corps of Engineers Federal Permit
- _____ Non-refundable application fee (see fee schedule above)
- _____ Business information and supporting documentation, if applicable (see p.1 sidebar of lease application)
- _____ Maps showing the proposed lease area, staging/equipment storage site, and offloading site (see pp. 3 and 5 of lease application).
- _____ Letter(s) of permission from riparian landowner(s) for proposed leases that are closer than 50' to shore at mean low water (see p. 3 of lease application)
- _____ Cross section diagram(s) showing actual depths at lease corners and shell or equipment maximum height. Please consider enclosing more than one cross-section diagram for especially large or oddly shaped leases (see p. 4 of lease application and attached sample diagrams).
- _____ If water depths have been collected, submission of that information is also encouraged, but not required unless specifically requested by the Department or USACE. Depths should be displayed relative to mean low water both within and around the proposed site.
- _____ **Water column only** - Sketches/images of any in-water equipment to be used in conjunction with a water column lease (see p. 9 of lease application).
- _____ **Water column only** - Sample layout of cages and floats with anchor and tether lines depicted and array spacing labeled in relation to the shoreline and orientation of proposed site (see p. 9 of the lease application and sample layout that is included with these instructions)
- _____ All applicant and co-applicant signatures for: Maryland's *Vibrio parahaemolyticus* Control Plan acknowledgement, Declaration of Intent to Actively Use, General Application acknowledgements (see pp. 8, 10 and 11 of lease application)

What happens to my application once it is submitted?

State Review: Upon receipt, the Department will evaluate your application for completeness. If incomplete, the applicant will receive a notification letter requesting any missing information. If complete, a legal and resource review of the proposed lease location will begin. The Department will notify you as soon as possible if your application requires any modifications as a result of conflicts identified during the review. Concurrent with the initial stages of Departmental review, the application will also be vetted by the Aquaculture Review Board (ARB), which meets monthly, to review and discuss new aquaculture projects. The ARB will provide notification to each applicant upon conclusion of their review. This notification will include any recommendations for project revisions identified by member agencies and a deadline for receiving such modifications for reconsideration.

Hydrographic Survey: After the completion of the initial review phase, and when any and all ARB concerns have been addressed to the satisfaction of the member agencies, the Department will conduct a hydrographic survey to determine the precise legal coordinates of the corners of the proposed lease area. For this survey, the applicant must supply a vessel and operator suitable for safe operation on the waters leading to and within the area of the proposed lease. The applicant is also required to supply stakes or buoys and signs to mark the corners.

Federal Review: Coordinates established during the hydrographic survey are used by the Department to create additional application materials, on your behalf, that are required by the U.S. Army Corps of Engineers and used to advertise the area to adjacent land owners. Your application and additional materials will be forwarded to the U.S. Army Corps of Engineers once DNR completes its review and survey. The Department can send you a copy of the materials provided to the Corps upon request.

Advertisement: As part of the public notification process, the Department will notify adjacent property owners with the proposed lease location and a project description through U.S. Mail. The Department will also issue a public notice with this information through the Department's website, a county newspaper, and to the Chair of the County Oyster Committee in the county of the proposed activity. State law requires advertising for 2 consecutive weeks followed by a 30-day public comment period. During this time the U.S. Army Corps of Engineers will conduct a separate but simultaneous review of the application materials through the RGP-1 or IP review process. A 30-day Federal public notice is required for applications in the IP process. The applicant will be notified of any comments received by either agency and if a public information session or administrative hearing has been requested.

Federal Permitting: In addition to receiving a State lease, a new leaseholder must be issued a permit authorization from the U.S. Army Corps of Engineers before conducting shellfish aquaculture activities on the lease. If the lease area does not meet the requirements of the RGP-1 and an IP is instead required from the U.S. Army Corps, the Maryland Department of the Environment must also issue a State Water Quality Certification (WQC) and certification of concurrence with the Coastal Zone Management (CZM) Program Act. CZM concurrence insures the protection of waters of the State and is necessary for activities requiring a U.S. Army Corps of Engineers Section 404 permit. This certification will be incorporated into the Corps of Engineers' IP authorization. There is no need for the applicant to file any paperwork directly to the Maryland Department of the Environment. The Maryland Department of the Environment has already determined that the activities authorized by the RGP-1 are consistent with the State's Clean Water Act and the enforceable policies of the Maryland Coastal Zone Management Program Act Section 401 water quality standards; therefore, individual WQC and CZM concurrence are not required for these applications. If an IP is issued, a \$100 USACE permit fee will be applied. The leaseholder is required to meet all special conditions specified in the ACOE permit.

State Lease Issuance: At the conclusion of the application process and once DNR receives confirmation that the USACE intends to permit the lease, the primary lessee will be sent a State “Shellfish Lease Agreement” to be signed by all leaseholders. Included with that mailing will be the information and application necessary to obtain the Shellfish Aquaculture Harvester Permit (SAHP) and Registration Cards (see below). The applicant is responsible for returning the signed lease agreement AND the completed, signed SAHP application to the Department. Once received back, the Department will execute and record the lease agreement. A copy of the fully executed lease agreement and a pro-rated invoice for the remaining calendar year’s rent will be mailed to the primary lessee. The appropriate permits, registration cards and reporting forms will be mailed once payment of the invoice is confirmed by the Department’s Finance and Administrative Services.

What other permits might be necessary?

All shellfish aquaculture leaseholders must possess a **Shellfish Aquaculture Harvester Permit (SAHP)** prior to engaging in aquaculture activities on their lease. In addition, any individual other than the permit holder engaged in aquaculture activities on the leased area must be registered with the Department by first being listed on that application or a subsequent SAHP Modification Form. The primary lessee will receive by mail a Shellfish Aquaculture Harvester Registration Card for all permittees and registrants. The cards will bear the name, street address and authorized lease number for that permittee or registrant and must be kept on their person at all times when engaged in aquaculture activities on the leased area. SAHP Applications and Modification Form requests are processed on a two week printing cycle.

Larvae, seed or shell imported across state lines requires an approved **Shellfish Import Permit**. This permit application must be submitted to the Department 30 days prior to the anticipated shipment date to ensure enough processing time. The Shellfish Import Permit Application is available at the Aquaculture Division web address given below or by request from the Department.

Land-based and in-water nursery operations (remote setting facilities, upwellers and downwellers) meeting certain size and location criteria are permitted separately by the Department. Please complete a **Shellfish Nursery Permit** Application, available at the Aquaculture Division web address given below or by request from the Department.

Contact Information

For questions regarding DNR Commercial Shellfish Aquaculture Leases and Permits please contact:

Rebecca Thur (410) 260-8252 or rthur@dnr.state.md.us

or visit: <http://www.dnr.state.md.us/fisheries/oysters/industry/aquaculture/>

For questions regarding the required U.S. Army Corps of Engineers permit process please contact:

Beth Bachur (410) 962-4336 or Beth.Bachur@usace.army.mil

or visit: <http://www.nab.usace.army.mil/Missions/Regulatory/Aquaculture.aspx>

For questions regarding the required MDE State Water Quality Certification please contact:

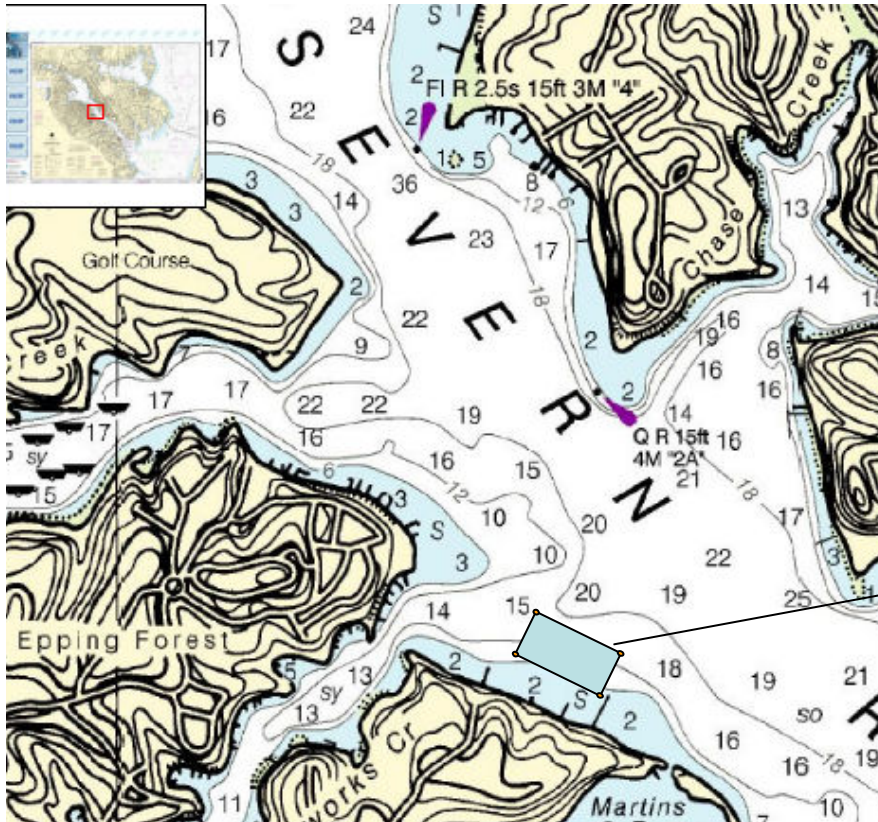
MDE, Water Management Administration (410) 537-3762 OR 1-800-876-0200

Revised 09-06-13

Example of how to show the location of your proposed site using a map and aerial diagram:

**Please include this info on all diagrams submitted with your lease application*

Name/Business: John I. Doe
Town, State: Your Town, MD
Waterbody: Your River
Date: September 06, 2013



**At least two of these corner coordinates should match those given on your cross-section diagram.*

xx°xx.xxx' N
xx°xx.xxx' W

xx°xx.xxx' N
xx°xx.xxx' W

xx°xx.xxx' N
xx°xx.xxx' W

xx°xx.xxx' N
xx°xx.xxx' W




Marker buoy (8x12" with name and lease #)

Cross-Section Example 1: Constant bottom depth

**Please include
this info on all
diagrams
submitted with
your lease
application*

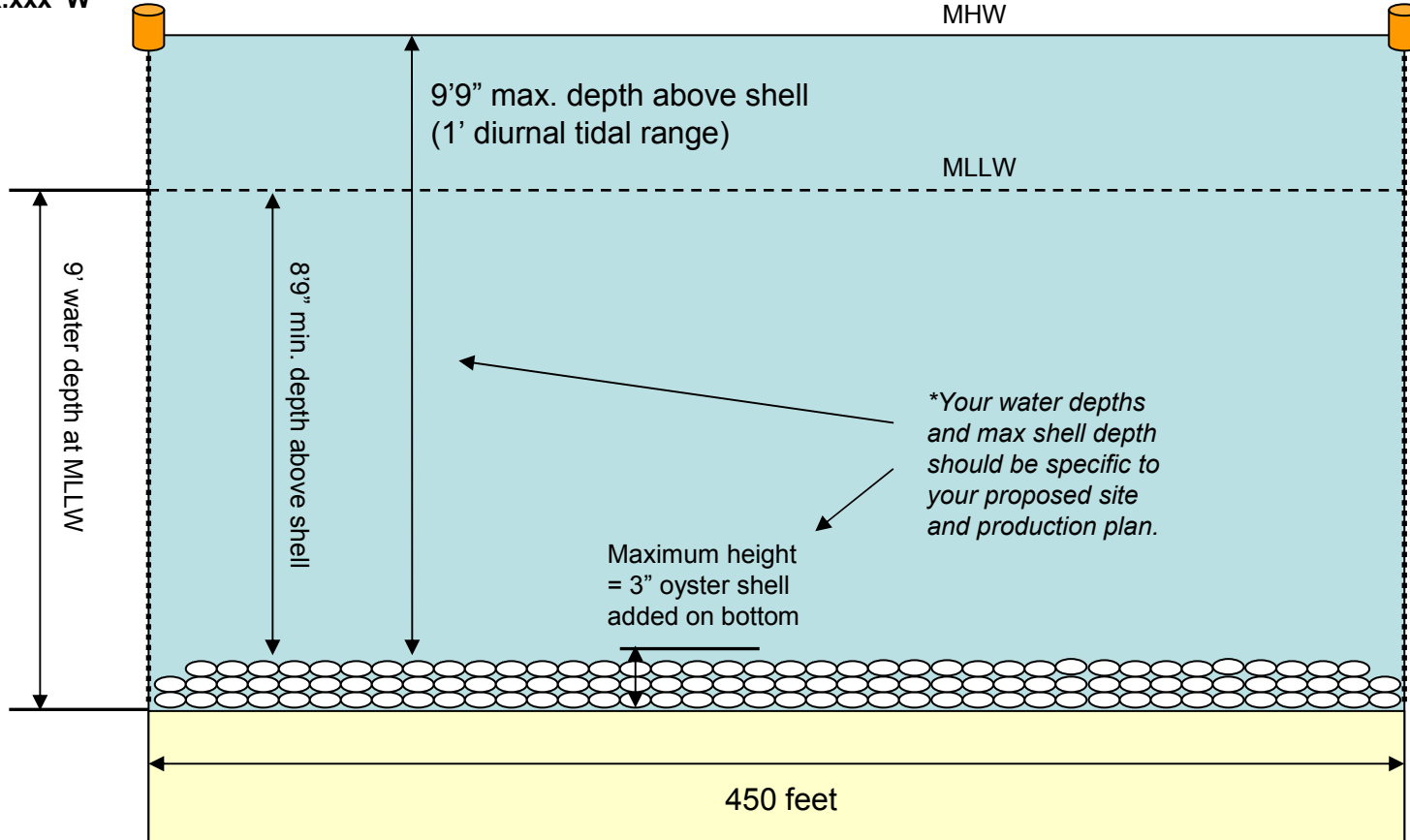
Name/Business: John I. Doe
Town, State: Your Town, MD
Waterbody: Your River
Date: September 06, 2013

 Marker buoy (8x12" with name and lease #)

MHW = mean high water

MLLW = mean lower low water

xx°xx.xxx' N
xx°xx.xxx' W




xx°xx.xxx' N
xx°xx.xxx' W

**These corner
coordinates
should match
those given in
the aerial map.*

Cross-Section Example 2: Variable bottom depth

**Please include
this info on all
diagrams
submitted with
your lease
application*

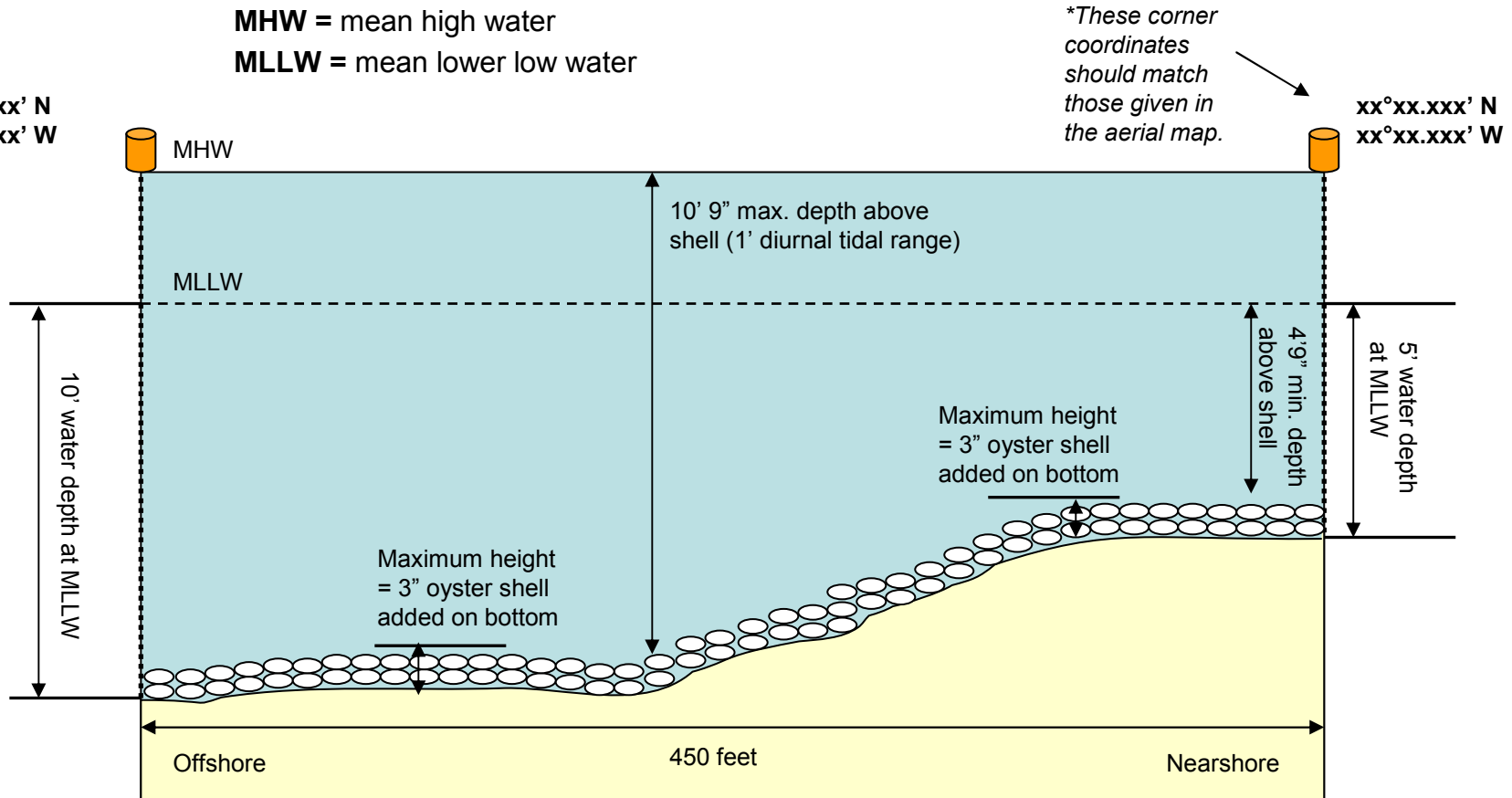
Name/Business: John I. Doe
Town, State: Your Town, MD
Waterbody: Your River
Date: September 06, 2013

 Marker buoy (8x12" with name and lease #)

MHW = mean high water

MLLW = mean lower low water


xx°xx.xxx' N
xx°xx.xxx' W



Cross-Section Example 3: Constant bottom depth with predator exclusion net

**Please include
this info on all
diagrams
submitted with
your lease
application*

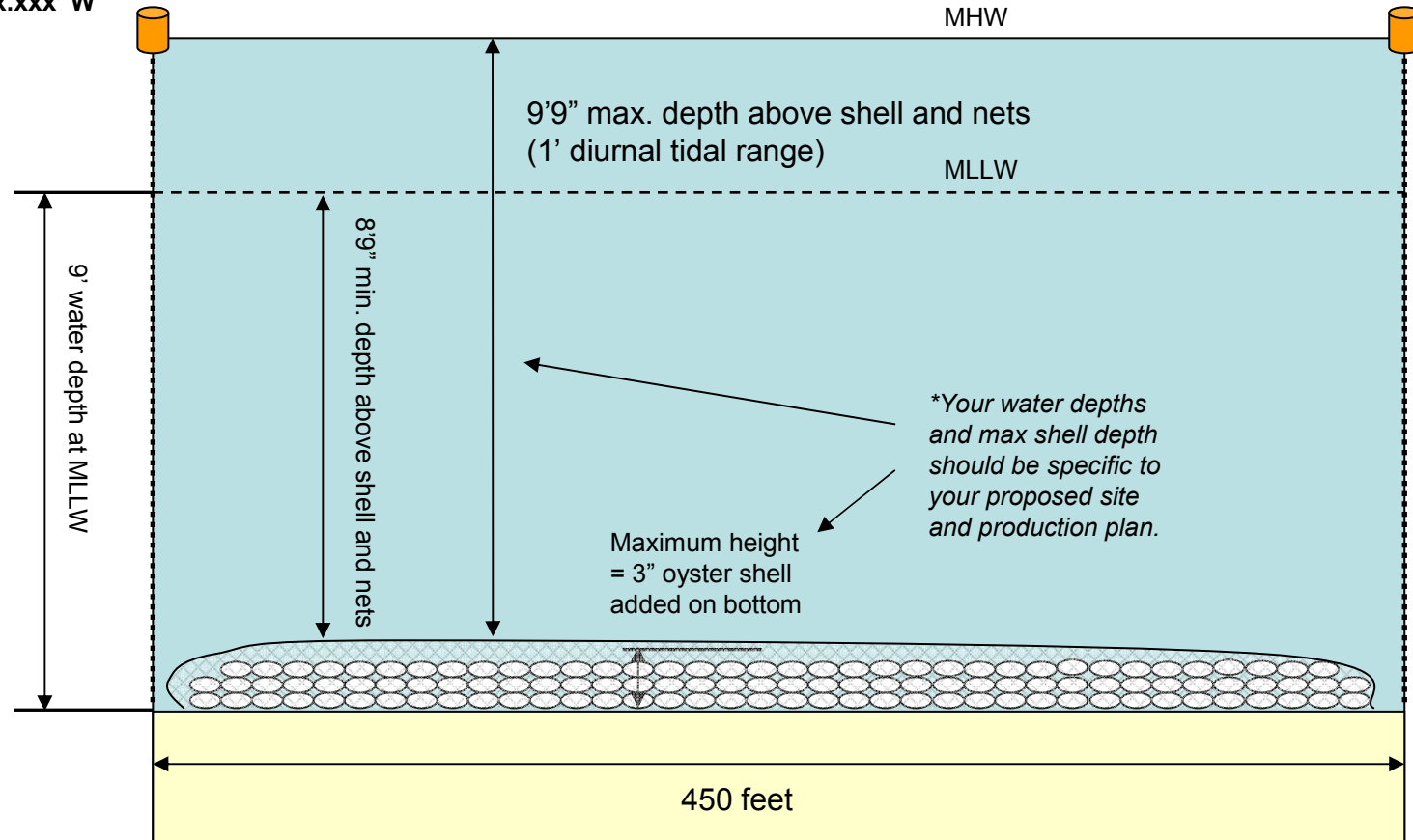
Name/Business: John I. Doe
Town, State: Your Town, MD
Waterbody: Your River
Date: September 06, 2012

 Marker buoy (8x12" with name and lease #)

MHW = mean high water

MLLW = mean lower low water

xx°xx.xxx' N
xx°xx.xxx' W



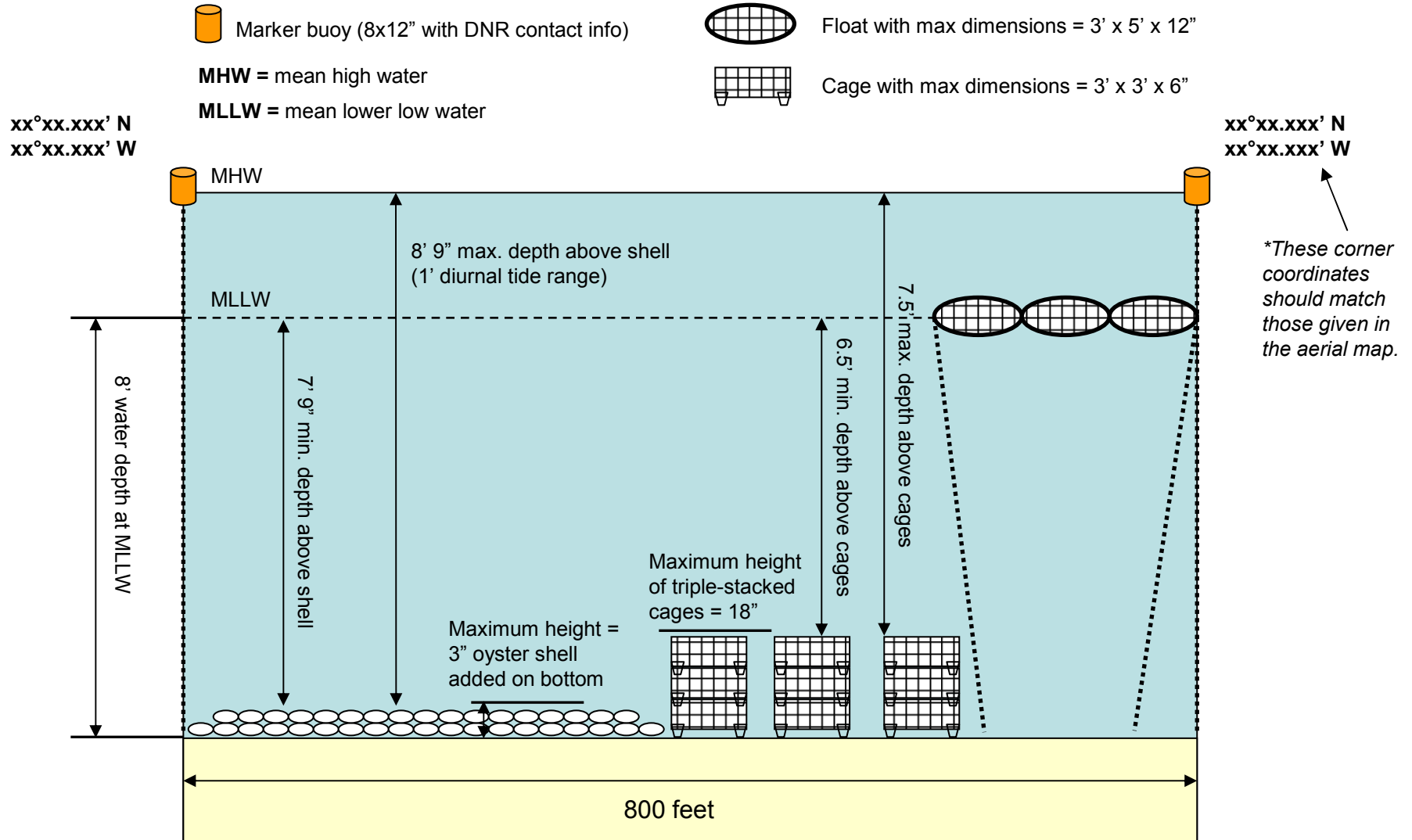
xx°xx.xxx' N
xx°xx.xxx' W

**These corner
coordinates
should match
those given in
the aerial map.*

Cross-Section Example 4: Constant bottom depth with cages, floats, and/or shell

**Please include
this info on all
diagrams
submitted with
your lease
application*

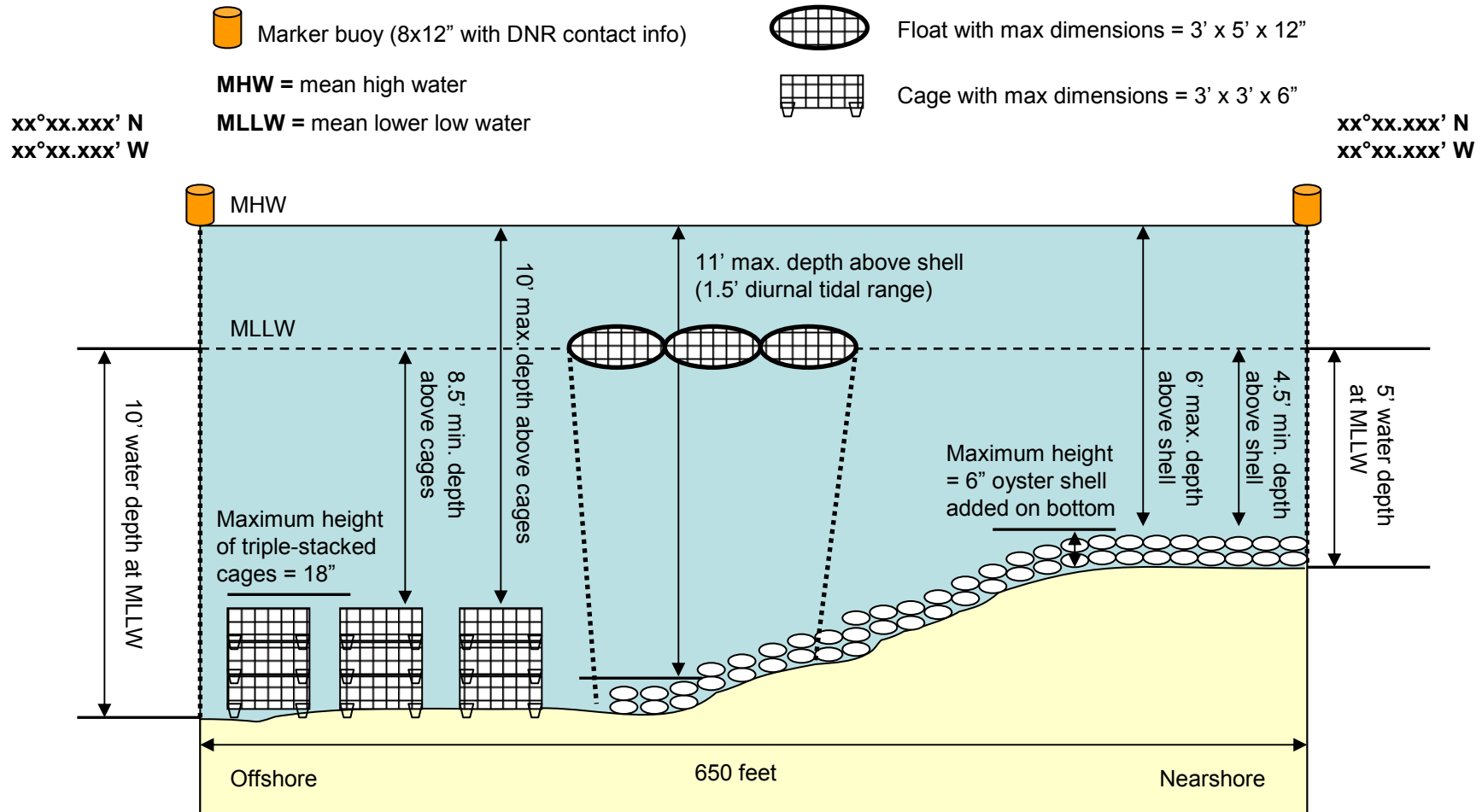
Name/Business: John I. Doe
Town, State: Your Town, MD
Waterbody: Your River
Date: September 06, 2013



Cross-Section Example 5: Variable bottom depth with cages, floats, and/or shell

**Please include
this info on all
diagrams
submitted with
your lease
application*

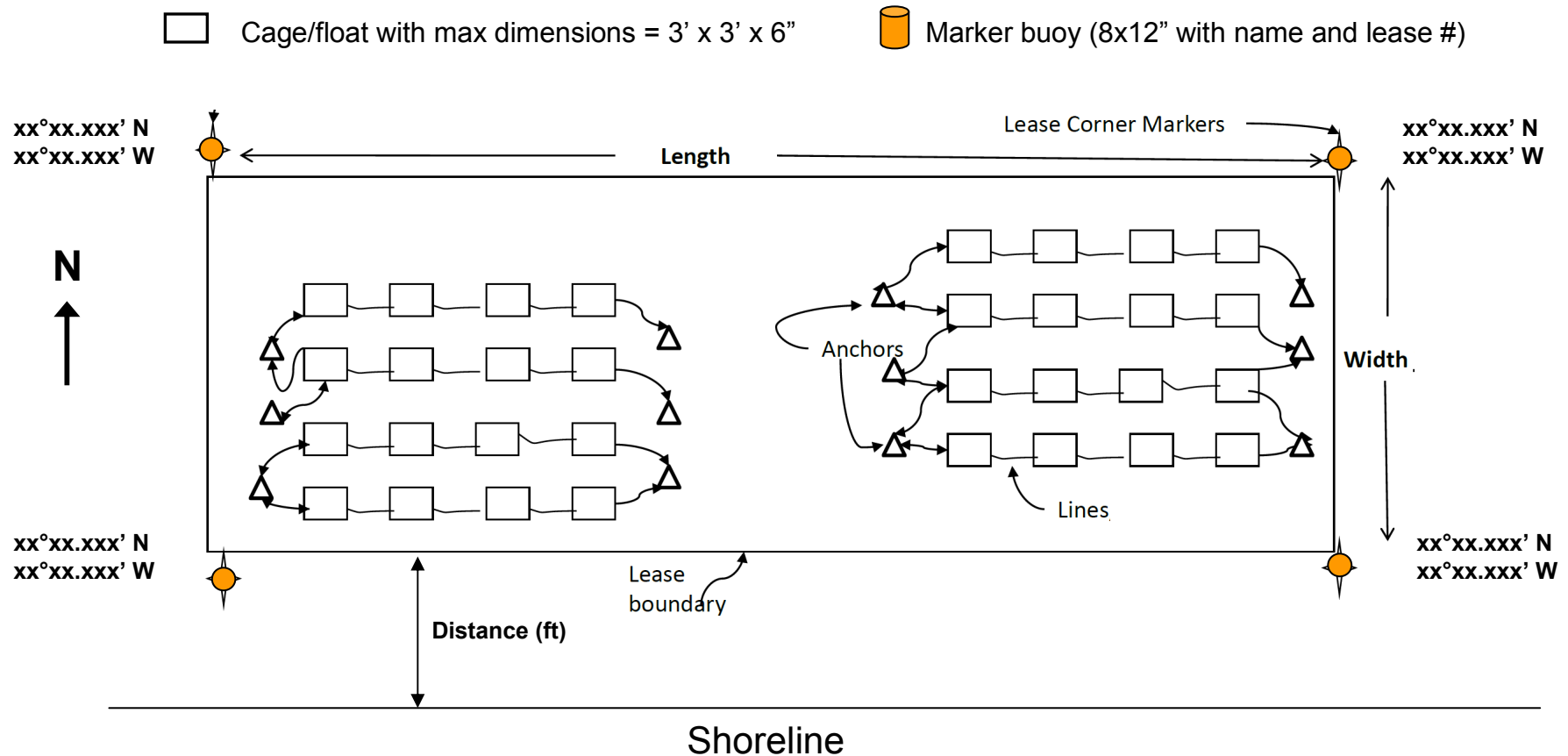
Name/Business: John I. Doe
Town, State: Your Town, MD
Waterbody: Your River
Date: November 01, 2012



Example of how to show the layout of equipment on your proposed water column lease:

**Please include this info on all diagrams submitted with your lease application*

Name/Business: John I. Doe
Town, State: Your Town, MD
Waterbody: Your River
Date: November 01, 2012



Spacing between individual cages/racks/floats: _____ feet

Spacing between arrays of cages/racks/floats: _____ feet

Maximum number of cages/racks/floats to be used: _____